

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Judith Le	Team: Squad #2	CCRB Case #: 201710677	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/27/2015 3:45 PM	Location of Incident: 1605 Fulton Street; 81st Precinct stationhouse	Precinct: 81	18 Mo. SOL 11/27/2016	EO SOL 11/27/2016	
Date/Time CV Reported Tue, 01/02/2018 9:28 AM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Tue, 01/02/2018 9:28 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Mark Xylas	5149	948160	081 PCT
2. SSA EreK Powers	05297	944907	081 PCT
3. POM Ryan Galvin	08096	948997	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 Michael Jimenez	01638	935278	081 DET
2. DT3 Robert Deck	02493	941630	081 DET

Officer(s)	Allegation	Investigator Recommendation
A.SSA EreK Powers	Force: At 1605 Fulton Street in Brooklyn, Sergeant EreK Powers pointed his gun at § 87(2)(b)	
B.POM Mark Xylas	Force: At 1605 Fulton Street in Brooklyn, Police Officer Mark Xylas pointed his gun at § 87(2)(b)	
C.POM Ryan Galvin	Force: At 1605 Fulton street in Brooklyn, Police Officer Ryan Galvin drew his gun at § 87(2)(b)	
D.SSA EreK Powers	Abuse: At 1605 Fulton Street in Brooklyn, Sergeant EreK Powers frisked § 87(2)(b)	
E.SSA EreK Powers	Abuse: At 1605 Fulton Street in Brooklyn, Sergeant EreK Powers searched § 87(2)(b)	
F.SSA EreK Powers	Abuse: At the 81st Precinct stationhouse, Sergeant EreK Powers strip-searched § 87(2)(b)	
G.SSA EreK Powers	Abuse: At the 81st Precinct Stationhouse, Sergeant EreK Powers detained § 87(2)(b)	

Case Summary

On January 2, 2018, § 87(2)(b) filed a written complaint via letter to the CCRB. On February 27, 2018, this case was reassigned from Inv. Raquel Velasquez to Inv. Judith Lê. The statute of limitations on this case expired on November 27, 2016.

On May 27, 2015, at approximately 3:40 p.m., at 1605 Fulton Street in Brooklyn, § 87(2)(b) witnessed the shooting of his friend, § 87(2)(b). § 87(2)(b) was with § 87(2)(b) when Sergeant Erik Powers, Police Officer Mark Xylas, and Police Officer Ryan Galvin of the 81st Precinct arrived on scene. Sergeant Powers and Police Officer Xylas pointed their guns at § 87(2)(b) (Allegations A and B: Force – Gun pointed, § 87(2)(g)) while Police Officer Galvin had his gun drawn, but not pointed (Allegation C – Gun drawn, § 87(2)(g)). Shortly thereafter, Detective Matthew LaMendola (Retired), Detective Michael Jimenez, Detective Robert Deck, Detective Steven Swantek (Retired), and Detective Donald LaManque (Retired) of the 81st Precinct Detective Squad also arrived. Under the authority of Sergeant Powers, after being handcuffed, § 87(2)(b) was allegedly frisked (Allegation D: Abuse of Authority – Frisk, § 87(2)(g)) and searched (Allegation E: Abuse of Authority – Search (of person), § 87(2)(g)). § 87(2)(b) was subsequently arrested and taken to the 81st Precinct stationhouse, where he was allegedly strip-searched (Allegation F: Abuse of Authority – Strip-searched, § 87(2)(g)). After being questioned, § 87(2)(b)'s arrest was voided and he was released (Allegation G: Abuse of Authority – detention, § 87(2)(g)).

No video footage capturing the incident was found.

Findings and Recommendations

Allegation (A) Force: At 1605 Fulton Street in Brooklyn, Sergeant Erik Powers pointed his gun at § 87(2)(b)

Allegation (B) Force: At 1605 Fulton Street in Brooklyn, Police Officer Mark Xylas pointed his gun at § 87(2)(b)

Allegation (C) Force: At 1605 Fulton street in Brooklyn, Police Officer Ryan Galvin drew his gun at § 87(2)(b)

§ 87(2)(b) filed a written complaint on January 2, 2018 (Board Review #1). He was interviewed at the Brooklyn Detention Center on February 16, 2018. Detective Deck was interviewed at the CCRB on May 30, 2018. Police Officer Galvin was interviewed at the CCRB on June 4, 2018. Sergeant Powers was interviewed at the CCRB on June 8, 2018. Police Officer Xylas was interviewed at the CCRB on June 13, 2018. Detective Jimenez was interviewed at the CCRB on June 22, 2018.

It is undisputed that on May 27, 2015, § 87(2)(b) was shot and killed in the courtyard of the § 87(2)(b). § 87(2)(b) was with § 87(2)(b) and tried to obtain medical assistance for his friend. Shortly thereafter, officers arrested § 87(2)(b). § 87(2)(b) now deceased, in regard to a firearm found in the vicinity, as well as § 87(2)(b).

§ 87(2)(b) stated he was with § 87(2)(b) in the courtyard when he heard gunshots and saw § 87(2)(b) fall to the ground. § 87(2)(b) went to the ground and held § 87(2)(b). Shortly thereafter, he saw Sergeant Powers, Police Officer Galvin, and Police Officer Xylas run through the courtyard with their firearms out. Sergeant Powers and Police Officer Xylas had their firearms pointed straight out, parallel to the ground, and were waving them side to side. Sergeant Powers and Police Officer Xylas pointed their firearms at § 87(2)(b) but § 87(2)(b) thought this might have been because the officers were trying to secure the area.

Sergeant Powers stated he was in a vehicle with Police Officer Galvin and Police Officer Xylas when upon turning onto Fulton Street, they heard gunshots being fired in succession. Sergeant Powers exited the vehicle and saw over 100 people fleeing the scene. He broadcast over the radio that shots were being fired from the corner of Marcus Garvey Boulevard and Fulton Street. Sergeant Powers could hear shots coming from the courtyard and, upon entering the area, the officers drew their guns because it was an active shooting scene, and they needed to be prepared. Sergeant Powers saw § 87(2)(b) holding a firearm in his hand, bleeding from his mouth and chest. As Sergeant Powers approached § 87(2)(b) he dropped his gun and fell to the ground. Sergeant Powers approached § 87(2)(b) and called an ambulance.

Police Officer Xylas stated he followed Sergeant Powers and Police Officer Galvin to the sound of the gunfire. Their guns were drawn because they were running towards an active shooting scene. Police Officer Xylas ran down the left side of the courtyard, Police Officer Galvin ran down the right side of the courtyard, and Sergeant Powers ran straight in the middle towards § 87(2)(b) who was holding a gun and vomiting blood. Police Officer Xylas remembered hearing someone screaming for an ambulance, but did not look back to see who was speaking. He did not recall interacting with § 87(2)(b).

Police Officer Galvin stated he was in the car when he heard a gunshot, followed by a succession of eight or nine gunshots. Police Officer Galvin exited the vehicle with his gun drawn. As he entered the courtyard, he saw § 87(2)(b) with blood coming out of his mouth, stumbling, and § 87(2)(b) running away from the scene. Police Officer Galvin did not speak with § 87(2)(b) and instead continued down the courtyard because § 87(2)(b) had caught his attention.

Patrol Guide 221-01 states that an officer's decision to draw their firearm should be based on an articulable belief that the potential for serious physical injury is present (**Board Review #2**).

§ 87(2)(b), § 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation (D) Abuse of Authority: At 1605 Fulton Street in Brooklyn, Sergeant Erik Powers frisked § 87(2)(b)

Allegation (E) Abuse of Authority: At 1605 Fulton Street in Brooklyn, Sergeant Erik Powers searched § 87(2)(b)

§ 87(2)(b) stated that he was questioned by Sergeant Powers, and then by Detective Jimenez and Detective LaManque. § 87(2)(b) tried to walk away, but the officers would not let him. The officers handcuffed § 87(2)(b) and an officer patted his chest, pants pockets, and legs, and placed their hands in his pockets. § 87(2)(b) was then placed in an unmarked car and taken to the 81st Precinct stationhouse.

§ 87(2)(b) was logged into the 81st Precinct Command Log (**Board Review #3**) for May 27, 2015, at 4:20 p.m. It notes that § 87(2)(b) was arrested by Police Officer Galvin in front of 1615 Fulton Street. The supervisor verifying the arrest was Sergeant Powers. There are no charges listed. § 87(2)(b) was detained for more than three hours for investigation/processing. The record does not mention a strip search. The arrest was later voided and at 3:15 a.m., § 87(2)(b) was released.

Sergeant Powers stated that while he instructed Police Officer Galvin to take § 87(2)(b) to the stationhouse, he did not interact with § 87(2)(b) and did not order for him to be taken to the stationhouse.

Police Officer Galvin stated he did not have contact with § 87(2)(b) while on scene, and was largely focused on arresting § 87(2)(b). He noted that the only interaction he had with § 87(2)(b) was when he was instructed by officers from the Detective Squad to take § 87(2)(b) back to the 81st Precinct stationhouse for further investigation. While he did not recall seeing anyone frisk or search § 87(2)(b), he noted that § 87(2)(b) would have been frisked prior to being placed in the vehicle for the officers' safety.

Police Officer Xylas stated that while his memo book shows he transported § 87(2)(b) back to the 81st Precinct stationhouse, he did not recall driving him, or interacting with § 87(2)(b) "at all." Police Officer Xylas did not remember the circumstances of the transport and did not know if § 87(2)(b) was frisked or searched before entering the vehicle.

Detective Deck stated he and Detective Swantek were in their car when they received a call for a male shot at 1625 Fulton Street. He noted that as part of the 81st Precinct Detective Squad, it was his job to investigate homicides, and generally, upon arriving on scene, patrol officers filled them in on details so they could take over. Upon arriving at the location, Detective Deck saw "a lot" of officers, and described the scene as chaotic. Detective Deck did not recall seeing or speaking to § 87(2)(b). A short time later, Detective Deck and Detective LaMendola were instructed to transport § 87(2)(b) to the 81st Precinct stationhouse.

Detective Jimenez stated that upon arriving on scene, he and Detective LaManque saw people, guns, drugs, and blood. He and Detective LaManque began conducting their investigation by downloading videos and interviewing people in the vicinity of 1605 Fulton Street. Detective Jimenez did not recall seeing or interacting with § 87(2)(b) on scene.

While the investigation was unable to identify the officer who physically frisked and searched § 87(2)(b) Sergeant Powers was listed in the Command Log as the supervisor verifying his arrest and was identified as the supervisor on scene at the location of his arrest. Since § 87(2)(b)'s account indicated that the frisk and search were incident to this arrest, the frisk and search allegations have been pleaded against Sergeant Powers.

Once an arrestee is handcuffed, prior to being removed to a stationhouse, officers should immediately frisk and search the prisoner and search the adjacent vicinity for weapons, evidence and/or contraband. Patrol Guide Procedures 208-02 and 208-03 (**Board Review #4**).

§ 87(2)(b), § 87(2)(g)

Allegation (F) Abuse of Authority: At the 81st Precinct stationhouse, Sergeant Erik Powers strip-searched § 87(2)(b)

Allegation (G) Abuse of Authority: At the 81st Precinct stationhouse, Sergeant Erik Powers detained § 87(2)(b)

§ 87(2)(b) stating that after being taken to the stationhouse, he was taken straight to the holding cells and did not stop at the front desk. § 87(2)(b) was then strip-searched, but he could not remember all the details because he has been strip-searched “a million times.” § 87(2)(b) removed almost all of his clothes, including his shoelaces, hat, shirt, pants, and underwear. § 87(2)(b) then sat in the holding cells, until he was questioned by Detective Jimenez.

Sergeant Powers stated he remained at the crime scene because he was the supervisor on scene, and needed to establish the crime scene. Sergeant Powers noted he later returned to the 81st Precinct stationhouse to supervise the arrest of § 87(2)(b). While there, he only interacted with Police Officer Galvin and § 87(2)(b). Sergeant Powers reviewed the Command Log (**Board Review #3**) and stated he did not make the Command Log entry regarding § 87(2)(b)'s arrest. He did not recall seeing him at the stationhouse. Sergeant Powers did not approve a strip search for § 87(2)(b) or anyone that evening. He did not hear about § 87(2)(b) being strip-searched.

Police Officer Galvin stated that he and Police Officer Xylas transported § 87(2)(b) back to the stationhouse. Police Officer Galvin believed he was listed as the arresting officer because he was the officer who brought § 87(2)(b) to the front desk. Police Officer Galvin stayed with § 87(2)(b) while he completed his pedigree information. He then dropped off § 87(2)(b) with the Detective Squad, where he believe § 87(2)(b) was placed in the second floor holding cells. Police Officer Galvin did not see anyone from the Detective Squad strip search § 87(2)(b). He did not know why § 87(2)(b)'s arrest was voided, as he immediately went back to the crime scene.

Police Officer Xylas stated that after arriving at the stationhouse, he did not strip search § 87(2)(b) and did not see any individuals being strip-searched. Police Officer Xylas estimated that he stayed at the stationhouse for a short time before returning to the incident location, as he was the first officer on scene and had to voucher everything.

Detective Jimenez stated that after downloading video from several locations, he returned to the stationhouse. His first interaction with § 87(2)(b) was in the 81st Precinct Detective Squad interview room. Detective Jimenez did not strip search § 87(2)(b) and did § 87(2)(b) did not mention being strip-searched. He and Detective LaManque interviewed § 87(2)(b) whose story corroborated the video footage. Once Detective Jimenez determined § 87(2)(b) was a witness rather than the shooter, he was released.

Detective Deck stated that after dropping off § 87(2)(b) he remained at the stationhouse until the end of tour, doing computer work and checks for the Detective Squad field team. He did not recall seeing § 87(2)(b) at the stationhouse.

§ 87(2)(b), § 87(2)(g)
[REDACTED]

§ 87(2)(b), § 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- Sergeant Powers has been a member-of-service for 11 years and has been a subject in 13 cases and 28 allegations, of which four were substantiated in three cases:
 - Case #201407556 involved a substantiated allegation of premises entered and/or searched. The Board recommended Charges. An APU trial reached a disposition of Not Guilty and no penalty was imposed.
 - Case #201606619 involved substantiated allegations of premises entered and/or searched and authorized issuance of a summons. The Board recommended Command Discipline A, and the NYPD imposed Command Discipline A.
 - Case #201608616 involved a substantiated allegation of threat of force. The Board recommend Command Discipline A and the NYPD reached a disposition of No Disciplinary Action-SOL and no penalty was imposed.
 - Sergeant Powers has three additional CCRB cases under investigation: Cases #201706490, #2017073272, and #201801675.
 - § 87(2)(g) [REDACTED]
- Police Officer Xylas has been a member-of-service for nine years and has been a subject in eight cases and seventeen allegations, two of which were substantiated in one case:

- Case #201407556 involved substantiated allegations of premises entered and/or searched and threat to damage/seize property. The Board recommended Charges. An APU trial reached a disposition of Not Guilty and no penalty was imposed.
- Police Officer Xylas has one additional CCRB case under investigation, case #201710412.
- § 87(2)(g) [REDACTED]
- Police Officer Galvin has been a member-of-service for eight years and has been a subject in eighteen allegations, two of which were substantiated in two cases:
 - Case #201306539 involved a substantiated allegation of vehicle search. The Board recommended charges. An APUL trial reached a disposition of Not Guilty and no penalty was imposed.
 - Case #201407556 involved a substantiated allegation of premises entered and/or searched. The Board recommended Charges. An APU trial reached a disposition of Not Guilty and no penalty was imposed.
 - § 87(2)(g) [REDACTED]
- This is the first complaint to which § 87(2)(b) [REDACTED] has been a party (**Board Review #5**).

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- As of July 5, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**Board Review #7**).

Squad No.: 2

Investigator: _____

Signature	Print Title & Name	Date
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Squad Leader: _____

Signature	Print Title & Name	Date
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Reviewer: _____

Signature	Print Title & Name	Date
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